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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/955,894	09/19/2001	Deborah Marie Cocco	Z6000(V)	9842

201 7590 03/01/2004

UNILEVER
PATENT DEPARTMENT
45 RIVER ROAD
EDGEWATER, NJ 07020

EXAMINER

SHAPIRO, JEFFERY A

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 03/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/955,894	Applicant(s) <i>SW</i> COCCARO ET AL.	
	Examiner Jeffrey A. Shapiro	Art Unit 3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6 and 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (US 6,578,763) in view of Littlejohn (US 6,553,353). Brown discloses the following method for purchasing a consumer product.

As described in Claim 1;

1. selling a consumer product (detergent) in a package (a bottle/container) to a consumer at a point of purchase establishment;
2. instructing the consumer to retain the package after the consumer product has been consumed;
3. providing a means for the customer to have the package refilled with consumer product;

(See col. 1, lines 10-40.)

As described in Claims 2, 3, 9 and 12;

4. the product is a liquid detergent (see abstract and figure 1);

As described in Claim 4;

5. the point of purchase establishment is a mini-mart, department store, drug store or supermarket (see col. 1, lines 10-12);

As describe in Claim 5;

6. the package is a bottle (see col. 1, lines 13 and 14);

As described in Claims 6 and 8;

7. the bottle contains liquid detergent (see col. 1, lines 12 and 14);

As described in Claim 10;

10. the package has an information device and is refilled by being placed in association with a refilling device having an information detector for reading information about the product off of the information device (see col. 3, lines 43-52;)

Brown further discloses the following.

(Note that the method of Brown discloses a customer buying an original container with detergent at an original price, then discounting subsequent refills at a price that reflects a certain discount based upon the lack of requirement for a container. Applicant's formula discloses prepaying for a set number of refills, where the original purchase price for the refillable container is discounted for the container originally bought, but no longer required for subsequent refills. See col. 2, lines 4-25 of Brown, noting that one refill is included in the sale price of the system of Brown. This refill is signified by the discount coupon and is predetermined by the coupon. These coupons are dispensed each time a refill is performed.)

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Brown does not expressly disclose, but Littlejohn discloses the following.

As described in Claim 1;

3a. *wherein the product is sold at a sale price that includes a predetermined number of refills;*

As described in Claim 11;

11. the method satisfies the formula $P_0 < P_T + (P_R)N'$

Where $P_0 = P_T + (P_R)N$

P_0 = original purchase price of a consumer product

P_T = typical purchase price of a consumer product

P_R = refill price

N = a defined number of refills

N' = a defined number of purchases

$N=N'$

(Note that Littlejohn discloses prepaying for a certain amount of power based in units such as gallons of water or cubic feet of gas. The number of refills can be considered to be equivalent to a particular amount of the utility, such as gallons of water or cubic feet of gas. The customer's account is then credited accordingly. See col. 3, lines 20-29 and col. 11, lines 24-53.)

Both Brown and Littlejohn are considered to be analogous art because Brown discloses repeatedly filling a bottle with detergent, each refill being at a set price and Littlejohn describes prepaying for a set amount of "refills" of a utility.

At the time of the invention, it would have been obvious to one ordinarily skilled in the art to have prepaid for a set number of refills.

The suggestion/motivation would have been to allow for a more efficient method to pay purchases and to reduce the individual cost of the material (detergent) refilled. See col. 3, lines 15-50 and col. 2, lines 33-50. Note also that detergent refills are considered equivalent to volume of water or volume of gas, for example.

Therefore, it would have been obvious to combine Brown and Littlejohn to obtain the invention as described in Claim 11.

3. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Littlejohn, and further in view of Duvall (US 5,522,428). Brown discloses the method as described above. Brown further discloses refilling a container/bottle a number of times. See, for example, col. 2, lines 4-25. Brown does not expressly disclose, but Duvall discloses the following.

As described in Claim 7;

8. the package is refilled a predetermined number of times, the predetermined number being less than a number of times that causes stress fractures in the package;

(Note that Duvall discloses in col. 1, lines 50-65, that cyclic filling and refilling of a container subjects said container to cyclic fatigue, noting also in line 52-54, that such a cyclic filling and refilling under pressure is life limiting to the container.

Both Brown and Duvall are considered to be analogous art because Brown discloses repeatedly filling a bottle at pressure and Duvall speaks to a cyclic fatigue life of such bottles.

At the time of the invention, it would have been obvious to one ordinarily skilled in the art to have limited the number of refills based on the fatigue cycle life of the bottle under repeated pressurized fillings.

The suggestion/motivation would have been to prevent possibly dangerous or unwanted bursting of the container used for repeated fillings of detergent.

Therefore, it would have been obvious to combine Brown and Duvall to obtain the invention as described in Claim 7.

Response to Arguments

4. Applicant's arguments filed 12/22/03 have been fully considered but they are not persuasive. Applicant's "response to the information request" of 12/22/04 has been accepted. Regarding Applicant's added claim language in Claim 1, "*wherein the product is sold at a sale price that includes a predetermined number of refills;*"

Again, the system of Brown issues a coupon for each refill. This refill is signified by the discount coupon and is predetermined by the coupon. These coupons are dispensed each time a refill is performed. Littlejohn discloses the concept of "prepaying" for a set amount of something, in this case, volume of a utility, such as gas or electric. Brown discloses coupons for each refill subsequent to the original purchase, which includes the container. It would have been obvious to one ordinarily skilled in the art to have incorporated a "prepaid system" such as used in Littlejohn's system so as to prepay for such refills, signified by the coupons, in Brown's system. Although the Littlejohn's system concerns utility payments, the problem solved, prepayment of a quantity of something, is the same as in Brown's system. Therefore, it would have been obvious to apply the teaching/suggestion of Littlejohn to the system of Brown. See also other prior art "prepaid" systems below.

Applicant asserts that Duvall does not provide a teaching regarding a set number of refills for a particular container for said detergent/liquid, based on a certain number of refills/pressurizations before container failure. Note that pressurizations of a container are considered, at the very least, to be a more severe failure requirement, but that the same considerations are present as in Applicant's system. These considerations are that the repeated refilling of a single container results in flexure of the sides of the container. Such flexure is due to force from something. This force appears to be from the liquid itself, if not the liquid along with an entraining gas, such as air. Such a force is considered to be in the form of "pressure" on the sides of the container. Even if it is argued that Applicant's system does not fill the container using pressurized liquid, the

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fact that Duvall concerns the repeated flexure of the sides of a container is considered to be analogous to Applicant's system because it encompasses failure of the container after a certain number of fillings. Therefore, Duvall is considered to apply to Applicant's system, as described above.

Conclusion

5. Note also, as mentioned in the prior action, that Gomez et al (US 5,319,003) discloses that composite articles and long fatigue life are desirable properties for a container to have. See col. 1, lines 15-47. See also Humele et al (US 6,599,569 B1) which discloses that plastic bottles flex when pressurized. See col. 3, lines 25-36. Herman et al (US 4,090,394) discloses a plastic bottle testing apparatus which produces a stress-strain curve for thermoplastic bottles. See abstract.

Note also, as mentioned in the prior action, that such a payment scheme as prepaying for a container and a set number of refills, where the refills are priced less than buying one container with contents a first time only, is considered to be the same as prepaying for a wide number of items, with detergent substituted. See, for example, Hassett (US 5,805,082), which discloses a prepaid toll pass system in which a customer prepays for a set number of toll passages. See col. 23, lines 36-44 and col. 24, lines 3-11. Note also Kolls (US 6,056,194) which describes prepaid copy cards whereby a customer prepays for a set number of copies. See col. 2, lines 62-67 and col. 3, lines 1-18.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ishikura et al (JP 11185164 A) describes a pricing system which takes into account subsequent refills, News and Observer Article, describing free refills of popcorn and beverages, Business and Industry article, describing a pricing system used by Staedtler for including free refills of writing material such as lead or ink as well as erasers for writing utensils. Coccaro et al (US 20030051945A1) is cited as describing applicants' claimed system and for describing the use of such a system with a wide variety of products, such as laundry, cereal, shampoo, etc. Weena et al is cited as another Invention owned by Assignee Unilever that describes a similar pricing scheme as in the instant application.

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

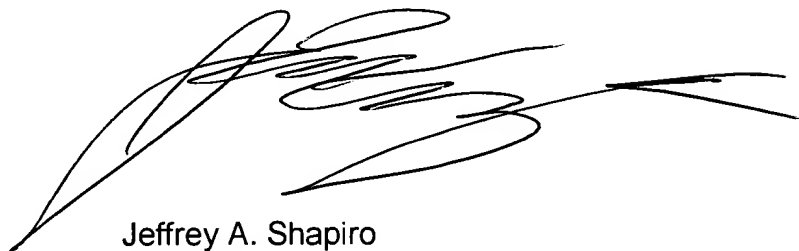
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (703)308-3423. The examiner can normally be reached on Monday-Friday, 9:00 AM-5:00 PM.

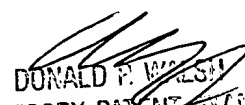
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald P. Walsh can be reached on (703)306-4173. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey A. Shapiro
Examiner
Art Unit 3653

February 28, 2004



DONALD P. WALSH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600